

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

Sulfur, Louisiana

**INTERNATIONAL MAINTENANCE
CORPORATION**

Employer

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 406**

Petitioner

Case No. 15-RC-8349

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²

¹ The Petitioner and Employer filed briefs that were duly considered.

3. The labor organization involved seeks to represent certain employees of the Employer.³
4. There is no history of collective bargaining between the parties.
5. The Petitioner seeks to represent a unit of all full-time employees operating heavy equipment defined as Draw Works, Carry Deck and cranes rated at 14 tons and heavier employed by International Maintenance Corporation at the CITGO Lake Charles Manufacturing Complex located in Sulphur, Louisiana; excluding all other employees, craftsmen, foremen, managers, clerical employees, professional employees, guards, and supervisors as defined in the Act. Although the parties are essentially in accord with the scope and composition of the appropriate unit, the Employer maintains that the unit will be expanding in the near future and that the petition is premature; whereas, the Union's position is that the anticipated future hires will be temporary employees and not eligible to vote in the election. The Petitioner is willing to proceed to an election if the Region determines that the future hires are eligible to vote in the election.

The record reflects that the Employer is currently working at CITGO under a three-year contract⁴, which began in January 2001. The Employer has been working at CITGO for twenty-three (23) years. The record shows that at the CITGO job site the Employer performs routine maintenance on an ongoing daily basis, all turnaround work

² The parties stipulate, and I find that, the Employer is a Louisiana corporation with its principal place of business located in Baton Rouge, Louisiana. The Employer is engaged in the business of industrial construction and maintenance at various jobsites throughout the state of Louisiana. The only jobsite involved in this proceeding is the one at the CITGO Lake Charles manufacturing complex located in Sulphur, Louisiana (hereinafter CITGO). During the preceding 12 months, a representative period, the Employer performed services valued in excess of \$50,000 directly from customers located outside the State of Louisiana.

³ The Employer and the Petitioner stipulate, and I find that, the Petitioner is a labor organization within meaning of the Act.

⁴ A copy of the contract was not made part of the hearing record. The record reflects that the Employer does not have any written agreement with CITGO to perform turnaround work at the job site.

and all capital work that ends in a turnaround.⁵ Routine maintenance is maintenance activities that happen during the course of a day or night. The Employer maintains a minimum base crew of 300 employees to cover routine maintenance. Six (6) of the 300 employees are in the petitioned-for unit (hereinafter the bargaining unit).

On or about July 28, 2001, there was an emergency at the jobsite and the Employer had to hire twenty-five (25) to fifty (50) additional employees.⁶ Six (6) of the new hires belonged to the bargaining unit. The record does not reflect whether any of the six new hires were former employees. As of the date of the hearing, there were approximately eight (8) employees in the bargaining unit.⁷ However, the Employer estimated that by the payroll end date of August 12, 2001, there would only be six (6) employees in the bargaining unit.

CITGO has several units. A turnaround is a period of time in which a unit is made non-operational. During this period, the Employer hires additional employees and works these employees day and night to perform construction and maintenance-type activities on the unit that can not be performed while the unit is operating. CITGO can have multiple turnarounds or one stand-alone turnaround scheduled for any given period. Employees hired for a one stand-alone turnaround are laid off at the end of the turnaround or transfer to another job site at CITGO. The record does not reflect the period of the most recent turnaround, the frequency of previous turnarounds or whether

⁵ According to the record, the bargaining unit employees perform the same functions at CITGO that they would perform at a new a construction job site.

⁶ The record does not reflect the nature of the emergency work.

⁷ The record discloses that some of these current employees will be assigned to the turnarounds starting October 8, 2001, and some will remain in routine maintenance.

bargaining unit employees hired for previous turnarounds were actually transferred to other job sites at the end of the turnaround.⁸

The Employer does not have written contracts with CITGO for each turnaround. The Employer does not have any written agreements with CITGO that obligates CITGO to begin and/or end a turnaround on a specific date. CITGO, within its discretion, determines when a turnaround occurs.⁹ In fact, CITGO may cancel a scheduled turnaround and not suffer any financial penalty to the Employer for having canceled the turnaround.

The employees hired for a turnaround receive the same rate of pay for their specific job classification. They can participate in the Employer's health, dental and cancer plans. After a year of employment, they can earn vacation time and participate in the Employer's 401 (K).

A normal one stand-alone turnaround lasts approximately six (6) weeks. Prior to shutting down a unit for one stand-alone turnaround, the Employer initiates a pre-turnaround in which it tries to execute as much work possible without shutting down the unit. During the pre-turnaround, the Employer gradually hires employees for the turnaround. Once the unit is shut down, large numbers of employees are used until the unit is brought back into operation. The Employer then goes into a post-turnaround mode, which includes clean-up, taking down scaffolds, painting and/or insulating the unit.

⁸ IMC Exhibits 1, 2 and 3 indicate capital and turnaround manpower projections for June, July and August 2001; however, the record does not reflect that the employees were hired or that the turnarounds occurred as indicated in the Exhibits.

⁹ State and Federal law does require CITGO to perform certain functions at various times; however, the record does not reflect the nature of those functions and the times that they are required to be done.

Capital work does not differ in any significant respect from turnaround work. The use of the term “capital” refers to a budget category that is used to pay for material. When equipment is capitalized, it is depreciated over a period of years, where “expensed” equipment is depreciated within the current year.

The Employer works very closely with CITGO to project its upcoming manpower needs for turnarounds.¹⁰ Currently, CITGO has approximately twenty-six (26) major and several minor turnarounds scheduled from October 8, 2001 through calendar year 2004. Based upon discussions, meetings and data prepared by CITGO, the Employer currently plans to have a work force of 1,200 by mid-October 2001, to work the turnarounds scheduled to start in October 2001.¹¹ Of this number, the Employer projects that sixty-nine (69) will belong to the bargaining unit. In addition, the Employer currently projects to have seventy (70) bargaining unit employees in November 2001, thirty-one (31) in December 2001¹², forty-two (42) in January 2002¹³, thirty-four (34) in February 2002, forty-four (44) in March 2002, forty-five (45) in April 2002, forty-three (43) in May 2002, forty-four (44) in June 2002, fifty-four (54) in July 2002, fifty-nine (59) in August 2002, and seventy-five (75) in September 2002. As of the date of the hearing, the Employer had not hired any bargaining unit employees for the projected turnarounds and only moved ten (10) to twenty (20) percent of the lift equipment onto the job site. The

¹⁰ The record shows that the capital and turnaround manpower projections reflected in IMC’s Exhibit 3 change weekly. There are other maintenance contractors at CITGO and that the equipment operators projected in IMC’s Exhibit 2 includes all of the maintenance contractors on the job site.

¹¹ The turnarounds were originally scheduled to start in the early part of September 2001 and were postponed to October 2001.

¹² The record does not reflect how the Employer plans to phase out the number of bargaining unit employees from 70 in November 2001 to 31 in December 2001.

¹³ IMC Exhibits 1, 2, 3 reflect that at some point the Employer projected a higher need for all crafts in January 2002 than in November 2001. However, since CITGO’s creation of these Exhibits, some of the turnarounds scheduled for January 2002 have been changed to November 2001. Exhibit 1 has a date on it

record does not reflect when the Employer projects to reach its full complement of bargaining unit employees for the turnarounds scheduled to begin on October 8, 2001.

The Employer contends that because of the twenty-six (26) scheduled turnarounds it will not be able to follow the normal turnaround procedure used for a stand-alone turnaround. Chandler testified that the turnarounds are scheduled back to back and several turnarounds will be going on at the same time. As a result, when the October 8, 2000, turnarounds start, the Employer will start pre-turnaround on the next scheduled block of turnarounds. Hence, instead of laying off turnaround hires at the end of the turnaround as in the case of a one stand-alone turnaround, the employees might get a few days off and be right back to work on the next block of turnarounds. The record does not reflect as to whether these days off will be classified as unpaid leave, vacation time, or as a lay off.

In planning for future hires, the Employer's first choice is to select from a pool of former employees. The Employer maintains a compilation of its current employees and former employees via two magnet boards and its payroll computer system. The Employer maintains a 'scheduling room' which contains two large walls that are magnet boards. Every current employee and former employee has their name on a magnet. Current employees' magnets are placed on the board under their current job; whereas, former employees' magnets are placed in the bottom right-hand corner of one of the boards. The record does not reflect whether the former employee magnets are arranged according to

of June 7, 2001; Exhibit 2 has a data date on it of June 4, 2001; and Exhibit 3 has a date on it of June 28, 2001.

job classification, skill or just placed together. The Employer also uses its payroll computer system to locate former employees available for hire. The Employer has a database of approximately 10,000 people. Furthermore, as the Employer recruits employees, it uses its payroll computer system to determine if an applicant is a former employee by locating past payroll information. If the pool of former employees does not meet the Employer's hiring needs, the Employer will run advertisements in newspapers and other publications seeking applicants. The record does not reflect the Employer's history regarding the frequency of layoffs and/or recalls for the bargaining unit employees.

It is established that temporary employees with no reasonable expectation of future employment are ineligible to vote. **Macy's East** 327 NLRB No. 22 (1998). Under normal circumstances, the turnaround worker's employed by the Employer are hired for a specific project of finite duration. However, the Employer contends that because CITGO is planning an unprecedented number of turnarounds within the next two (2) to three (3) years it is focusing on "leveling" its manpower in order to continuously meet the needs of CITGO while avoiding massive layoffs.

The Employer's manpower projections are too uncertain. CITGO is not legally obligated to hire the Employer to perform the currently scheduled turnaround work. The manpower equipment operators' projections reflected in IMC Exhibit 2 include all the maintenance contractors at the CITGO job site. Yet, the Employer's manpower projections as indicated in IMC Exhibit 6 are contingent upon the Employer fulfilling all of CITGO requirements for equipment operators. I note that there is no evidence in the record to support the position that in the past CITGO retained the Employer to perform

all of its turnaround work. In fact, there is no evidence to support the position that in the past CITGO retained the Employer to perform a majority of its turnaround work.

Assuming CITGO hired the Employer to perform the turnaround work, the Employer can not legally obligate CITGO to start a turnaround on a specific date. In fact, since June 28, 2001, CITGO has moved turnarounds scheduled for September 2001 to October 2001 and turnarounds scheduled for January 2002 to November 2001. I note that in its Post-Hearing Brief¹⁴ at footnote 2, the Employer acknowledges that it is impossible to predict exactly whether a turnaround will begin and end on time. Hence, the future turnarounds upon which the Employer relies are not definite and imminent. See **Martin Marietta**, 214 NLRB 646 (1974). Accordingly, I conclude that the Employer's projections of manpower expansions are not so certain as to justify barring an immediate election.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time employees operating heavy equipment defined as Draw Works, Carry Deck and cranes rated at 14 tons heavier employed by International Maintenance Corporation at the CITGO Lake Charles Manufacturing Complex located in Sulphur, Louisiana, excluding all other employees,

¹⁴ The Employer cites several cases in its Post-Hearing Brief that the Employer contends supports its position that the petition is premature because the unit is expanding. In particular the Employer cites **Yellowstone International Mailing, Inc.**, 332 NLRB NO. 35 (2000), **Toto Industries Inc.**, 323 NLRB No. 124 (1997), and **General Cable Corporation** 173 NLRB 251 (1968). I note that the facts of these cases are distinguishable from the case herein, in that, the employers in the above cited cases operated out of their own facility or were purchasing their own facility and were in complete control of the planning process and were not in competition with other employers at the facility for future work. Whereas, herein, the Employer is not in control of the planning process and is in competition with other employers for the proposed scheduled work.

craftsmen, foremen, managers, clerical employees, professional employees, guards, and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 406.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the New Orleans Regional Office, 1515 Poydras Street, Suite 610, New Orleans, Louisiana 70112-3723 on or before August 29, 2001.

NOTICE POSTING REQUIREMENT

According to Board Rules and Regulations, Section 103.20, Notice of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570.

This request must be received by the Board in Washington by September 5, 2001.

Dated this 22nd day of August, 2001, at New Orleans, Louisiana.

/s/ Curtis A. Wells
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